

Appl. No. 10/553,073
Amendment dated: October 15, 2007
Reply to OA of: June 13, 2007

REMARKS

Applicants have amended the claims to more particularly define the invention taking into consideration the outstanding Official Action. Applicants have canceled claims 1-6 from the present application without prejudice or disclaimer and have added new claims 7-15 to better define the invention and as fully supported by the specification as originally filed. See for example the working examples on pages three and four of the specification. Applicants most respectfully submit that the claims now present in the application are fully supported by the specification as originally filed and no new matter is introduced.

The objection to claims 1 and 3-6 because of the informalities as set forth on page 2 of the outstanding Official Action has been carefully considered but is most respectfully traversed in view of the cancellation of the claims from the present application. In rewriting the claims the obvious spelling error in the name of the compound has been corrected. As would be evident to one skill in the art, in one aspect of the invention, the compound is used as a mole repellent by applying it to the area of mole activity. Additional claims have been added to this application and the vehicles containing the composition as fully supported by the specification. Accordingly, it is most respectfully requested that this objection be withdrawn.

The rejection of claim 2 under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention has been carefully considered but is most respectfully traversed in view of the cancellation of the claim from the present application. Accordingly, it is most respectfully requested that this rejection be withdrawn.

Applicants most respectfully submit that all of the claims now present in the application are in full compliance with 35 USC 112 and clearly patentable over the references of record.

Appl. No. 10/553,073
Amendment dated: October 15, 2007
Reply to OA of: June 13, 2007

The rejection of claims 1-4 under 35 USC 102(b) as being anticipated by Petersson et al. has been carefully considered but is most respectfully traversed in view of the cancellation of the claims from the present application and the following comments.

Applicants wish to direct the Examiner's attention to MPEP § 2131 which states that to anticipate a claim, the reference must teach every element of the claim.

"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). "The identical invention must be shown in as complete detail as is contained in the ... claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed Cir. 1989). The elements must be arranged as required by the claim, but this is not an *ipsissimis verbis* test, i.e., identity of terminology is not required. *In re Bond*, 910 F.2d 831, 15 USPQ2d 1566 (Fed.Cir. 1990).

In this regard, Petersson et al. teaches a formulation comprising 2-isopropyl-3-methoxy-pyrazine and a method of administering the formulation to an infested area to control insect pest species. However, the newly added claims of the present invention is restricted to controlling non-insect pests, such as moles and rodents.

Petersson et al. further teaches administration of the formulation to an infested area where the formulation attracts conspecific adults of a predator non-pest insect and thus makes use of the mechanism of predation, that is a relationship between two species where one species of animal (the predator, in this case e.g. lady-bird) hunts, kills and eats the other (the prey, in this case e.g. an aphid species). This is a mechanism quite different and far from the controlling mechanism used in the presently claimed invention wherein the infested area is rid of non-insect pests, such as moles and rodents, by the repelling action of the formulation administered.

Petersson et al. does not disclose nor indicate the use of any repelling action directed to non-insect pests and it is therefore Applicants strong belief that their presently claimed invention is not only novel over Petersson et al. but also non-obvious at the time the invention was made to a person having ordinary skill in the art to which

Appl. No. 10/553,073
Amendment dated: October 15, 2007
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the subject matter pertains. Accordingly, it is most respectfully requested that this rejection be withdrawn.

The rejection of claims 1-4 under 35 USC 102(b) as being anticipated by Leitner et al. has been carefully considered but is most respectfully traversed in view of the cancellation of the claims from the present application and the following comments.

Applicants most respectfully submit that Leitner et al. neither discloses or even suggests the use of any repelling action of 2-isopropyl-3-methoxy-pyrazine directed to non-insect pests, such as moles and rodents, and it is also with respect to Leitner et al. that Applicants strongly believe that their presently claimed invention is not only novel over Leitner et al., but also was non-obvious at the time the invention was made to a person having ordinary skill in the art to which the invention pertains.

The rejection of claims 5-6 under 35 USC 103(a) as being unpatentable over Leitner et al. in view of Dean et al. has been carefully considered but is most respectfully traversed in view of the cancellation of the claims and the above and following comments.

Applicants wish to direct the Examiner's attention to the basic requirements of a prima facie case of obviousness as set forth in the MPEP § 2143. This section states that to establish a prima facie case of obviousness, three basic criteria first must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine the reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations.

The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, not in applicant's disclosure. In re Vaeck, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

Section 2143.03 states that all claim limitations must be taught or suggested by the prior art. In re Royka, 490 F.2d 981, 180 USPQ 580 (CCPA 1974). "All words in a claim must be considered in judging the patentability of that claim against the prior art." In re Wilson, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970). If an

Appl. No. 10/553,073
Amendment dated: October 15, 2007
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independent claim is nonobvious under 35 U.S.C. 103, then any claim depending therefrom is nonobvious. In re Fine, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988).

Applicants also most respectfully direct the Examiner's attention to MPEP § 2144.08 (page 2100-114) wherein it is stated that Office personnel should consider all rebuttal argument and evidence presented by applicant and the citation of In re Soni for error in not considering evidence presented in the specification.

As previously noted, Leitner et al. neither discloses or even suggests the use of any repelling action of 2-isopropyl-3-methoxy-pyrazine directed to non-insect pests, such as moles and rodents as in the presently claimed invention. This is a claimed aspect of the invention which cannot be ignored. Applicants most respectfully submit that while both insects and moles may be considered pests, there is a distinct difference and there is nothing to suggest that a compound which is effective in treatment of insects would be effective in the treatment of mole, which is not an insect. Applicants strongly believe that their presently claimed invention is not only novel over Leitner et al., but also was non-obvious at the time the invention was made to a person having ordinary skill in the art to which the invention pertains in view of the combination of references relied upon in the rejection. Accordingly, it is most respectfully requested that this rejection be withdrawn.

Applicants acknowledge that the listing of references in the Search Report is not considered to be an Information Disclosure Statement (IDS) complying with 37 CFR 1.98(a)(2) which requires a legible copy of: each foreign patent document; each publication or that portion which caused it to be listed; for each cited pending unpublished U.S. application, the application specification including the claims, and any drawing of the application, or that portion of the application which caused it to be listed including any claims directed to that portion; and all other information or that portion which caused it to be listed.

Applicants submit concurrently herewith a copy of each cited foreign patent document and non-patent literature listed on Forms PTO/SB/08A and along with the fee set forth in 37 C.F.R. §1.17(p).


Appl. No. 10/553,073
Amendment dated: October 15, 2007
Reply to OA of: June 13, 2007

Applicants most respectfully request that the Examiner acknowledges consideration of the information provided concurrently herewith in accordance with prescribed procedures.

Applicants would appreciate an acknowledgment of the claim for priority and receipt of the priority document in the next official Action.

In view of the above comments and further amendments to the claims, favorable reconsideration and allowance of all the claims now present in the application are most respectfully requested.

Respectfully submitted,
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